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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,802	03/15/2004	James A. Scudder	ONT-102	1613
23410	7590	07/11/2005	EXAMINER	
COHEN SAKAGUCHI & ENGLISH LLP 2040 MAIN STREET, 9TH FLOOR IRVINE, CA 92614			BASICHAS, ALFRED	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/800,802	SCUDDER ET AL.	
	Examiner	Art Unit	
	Alfred Basichas	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-19 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 03 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5/23/05; 6/20/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 19 is objected to because of the following informalities: the claim depends from itself. Appropriate correction is required. ***For examination purposes, claim 19 will be treated as depending from claim 18.***

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3-5, 7-9, 12-15, 18, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Jean (FR2659940), which shows all of the claimed limitations. Jean shows, among other things, a self-heating tray including a container body 2, a thermic module 4 including two reactants 12,15, with a breakable barrier 15a attached to a top surface of the module, a hole in the bottom of the container with a piercing member 27 with button 25a. When actuated, the piercing member creates a vent that permits the gas to escape into the surrounding area. A separate container 3 is provided that holds the item to be heated, and includes a removable foil cover 10.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 2, 6, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jean (FR2659940), which discloses substantially all of the claimed

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limitations. As applicant is away Jean is a foreign document and while submitted by applicant did not include a translation. Accordingly, it is not clear whether or not certain elements are disclosed therein. Nevertheless, Official Notice is given for the use of glue as an adhesive, water and calcium oxide as the components of the exothermic reaction that provides heat, a separate container rather than an integral one as shown by Jean, and snap fit construction for removeably connecting components. All of the above are notoriously old and well known in the art for their respective uses. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the above-mentioned elements into the invention disclosed by Jean, for the intended purposes thereof.

8. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jean (FR2659940) in view of Kaneko (5,295,475). Jean discloses substantially all of the claimed limitations, but does not specifically recite partitioned compartments with varied heating thereof. Kaneko teaches a self-heating tray including partitioned compartments 11,12,13, with some (11 and 12) heated and others (13) receive substantially no heat (see at least fig. 2 and col. 4, lines 62-68). Kaneko teaches that such an arrangement has the advantage of providing for an entire meal with a variety of items. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the elements taught by Kaneko into the invention disclosed by Jean, so as to provide for an entire meal with a variety of items .

Prior Art

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Semaan and Grosso both disclose self-heating trays representative of the background art.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 571 272 4871. The examiner can normally be reached on Monday through Friday during regular business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 571 272 4877. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872 9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center telephone number is 571 272 3700.

June 28, 2005


Alfred Basichas
Primary Examiner